

Senate Bill No. 1781

CHAPTER 496

An act to amend Section 13137 of, and to add Part 3 (commencing with Section 12750) to Division 11 of, the Health and Safety Code, and to amend Section 12301 of the Penal Code, relating to flamethrowing devices.

[Approved by Governor September 14, 2004. Filed with Secretary of State September 14, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1781, Knight. Pyrotechnic operators.

Existing law provides for the licensing and oversight of pyrotechnic operators in the state, according to specified criteria. The State Fire Marshal is required to adopt regulations with respect to the licensing of pyrotechnic operators.

Existing law provides for the regulation of the sale, purchase, rental, lending, possession, transportation, storage, or use of, or manufacture, importation or exportation of, destructive devices, which are defined to include flamethrowing devices, by the Department of Justice.

This bill would delete flamethrowing devices from the definition of destructive devices.

This bill would require the State Fire Marshal to adopt regulations governing the possession and use of flamethrowing devices in this regard.

The bill would prohibit the use or possession of a flamethrowing device without a valid permit issued by the State Fire Marshal pursuant to the bill and would make a violation of this prohibition a crime, and would also authorize the State Fire Marshal to impose fees in amounts sufficient to cover the costs incurred in the administration and enforcement of these provisions.

By creating a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Part 3 (commencing with Section 12750) is added to Division 11 of the Health and Safety Code, to read:

PART 3. FLAMETHROWING DEVICES

CHAPTER 1. DEFINITIONS AND SCOPE

12750. For purposes of this part, the following definitions shall apply:

(a) “Flamethrowing device” means any nonstationary and transportable device designed or intended to emit or propel a burning stream of combustible or flammable liquid a distance of at least 10 feet.

(b) “Permitholder” means a person who holds a flamethrowing device permit issued pursuant to this part.

CHAPTER 2. ADMINISTRATION

12755. No person shall use or possess a flamethrowing device without a valid flamethrowing device permit issued by the State Fire Marshal pursuant to this part.

12756. The State Fire Marshal shall adopt regulations to administer this part and establish standards for the background investigation of an applicant for, and holder of, a flamethrowing device permit, and for the use, storage, and transportation of a flamethrowing device. In adopting these regulations, the State Fire Marshal shall consult with the Department of Justice regarding regulations for the use and possession of destructive devices (Chapter 12.5 (commencing with Section 970) of Division 1 of Title 11 of the California Code of Regulations). These regulations for the use and possession of destructive devices may provide suggestions for potential methods to utilize in developing standards and shall serve as guidance only. At a minimum, the regulations adopted by the State Fire Marshal shall require a permitholder to possess a current, valid certificate of eligibility issued by the Department of Justice pursuant to paragraph (4) of subdivision (a) of Section 12071 of the Penal Code.

12757. The State Fire Marshal may issue or renew a permit to use and possess a flamethrowing device only if all of the following conditions are met:

(a) The applicant or permitholder is not addicted to any controlled substance.



(b) The applicant or permitholder possesses a current, valid certificate of eligibility issued by the Department of Justice pursuant to paragraph (4) of subdivision (a) of Section 12071 of the Penal Code.

(c) The applicant or permitholder meets the other standards specified in regulations adopted pursuant to Section 12756.

12758. (a) If the State Fire Marshal denies an application for, or the renewal of, or revokes a flamethrowing device permit, the applicant for a flamethrowing device permit or permitholder shall be entitled to a hearing conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) The State Fire Marshal shall revoke a flamethrowing device permit if the permitholder does not comply with the requirements of this part and the regulations adopted pursuant to this part.

12759. The State Fire Marshal shall establish fees pursuant to this part that shall be deposited in the State Fire Marshal Licensing and Certification Fund.

CHAPTER 3. ENFORCEMENT AND PENALTIES

12760. The State Fire Marshal shall seize any flamethrowing device in the possession of any person who does not have a valid flamethrowing device permit issued pursuant to this part.

12761. Any person who uses or possesses any flamethrowing device without a valid flamethrowing device permit issued pursuant to this part is guilty of a public offense and, upon conviction, shall be punished by imprisonment in the county jail for a term not to exceed one year, or in the state prison, or by a fine not to exceed ten thousand dollars (\$10,000), or by both imprisonment and fine.

SEC. 2. Section 13137 of the Health and Safety Code is amended to read:

13137. (a) The State Fire Marshal Licensing and Certification Fund is hereby created in the State Treasury. All money in the fund is available for the support of the State Fire Marshal upon appropriation by the Legislature. All moneys collected by the State Fire Marshal pursuant to this part, pursuant to Part 2 (commencing with Section 12500) or Part 3 (commencing with Section 12750) of Division 11, and pursuant to Section 41961, shall be deposited in the fund and shall be available to the State Fire Marshal for expenditure upon appropriation by the Legislature for the purposes of this part, Part 2 (commencing with Section 12500) or Part 3 (commencing with Section 12750) of Division 11, or Section 41961, respectively.

(b) Neither this article nor any provision of this part or Part 2 (commencing with Section 12500) or Part 3 (commencing with Section



12750) of Division 11 or Section 41961 authorize fees to exceed the actual cost of administration of the programs administered by the State Fire Marshal, nor authorize the charging of fees to a particular group being regulated under a program, for the costs of regulation under another program or for the costs of a different group under the same program.

SEC. 3. Section 12301 of the Penal Code is amended to read:

12301. (a) The term “destructive device,” as used in this chapter, shall include any of the following weapons:

(1) Any projectile containing any explosive or incendiary material or any other chemical substance, including, but not limited to, that which is commonly known as tracer or incendiary ammunition, except tracer ammunition manufactured for use in shotguns.

(2) Any bomb, grenade, explosive missile, or similar device or any launching device therefor.

(3) Any weapon of a caliber greater than 0.60 caliber which fires fixed ammunition, or any ammunition therefor, other than a shotgun (smooth or rifled bore) conforming to the definition of a “destructive device” found in subsection (b) of Section 479.11 of Title 27 of the Code of Federal Regulations, shotgun ammunition (single projectile or shot), antique rifle, or an antique cannon. For purposes of this section, the term “antique cannon” means any cannon manufactured before January 1, 1899, which has been rendered incapable of firing or for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade. The term “antique rifle” means a firearm conforming to the definition of an “antique firearm” in Section 479.11 of Title 27 of the Code of Federal Regulations.

(4) Any rocket, rocket-propelled projectile, or similar device of a diameter greater than 0.60 inch, or any launching device therefor, and any rocket, rocket-propelled projectile, or similar device containing any explosive or incendiary material or any other chemical substance, other than the propellant for that device, except those devices as are designed primarily for emergency or distress signaling purposes.

(5) Any breakable container which contains a flammable liquid with a flashpoint of 150 degrees Fahrenheit or less and has a wick or similar device capable of being ignited, other than a device which is commercially manufactured primarily for the purpose of illumination.

(6) Any sealed device containing dry ice (CO₂) or other chemically reactive substances assembled for the purpose of causing an explosion by a chemical reaction.

(b) The term “explosive,” as used in this chapter, shall mean any explosive defined in Section 12000 of the Health and Safety Code.



SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

